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How do EU norms diffuse?

Rule of Law Promotion in EU-China Cooperation on Environmental Governance¹

Abstract: the rule of law (RoL), as a highly valued international principle and one of the founding principles of the European Union (EU), plays a significant role in its environmental governance. Overlapping interests between China's search for effective solutions to environmental problems and the EU's environmental governance experience provide a solid ground for bilateral cooperation in environmental area, and the RoL which is embodied in these bilateral programmes has also been diffused to China. Through looking at the top-down approach of capacity building in law enforcement and the bottom-up approach of the raising of public awareness of environmental rights and public participation promotion, China's lesson-drawing and the EU's RoL promotion in EU-China Environmental Governance Programme can be understood. Moreover, although studying the long-term effect of RoL promotion requires more empirical data, this paper does explain how EU norms diffuse in practice.

Key words: the rule of law, environmental governance, norm diffusion, European Union, China

Introduction

The RoL, an international principle emphasised by the United Nations (UN) and also one of the European Union's (EU) founding norms, is deemed as the benchmark and one of the guiding principles of the EU's external relations (Pech 2012:10). The most comprehensive definition at the UN level remains as of today the one given by the UNSG in its report on the 'The Rule of Law and Transnational Justice in Conflict and Post-Conflict Societies', which defined the RoL as 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency' (UNSG 2004:4). While for the EU, the Consolidated Version of the Treaty on European Union indicates that 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the RoL and respect for human rights' (Article 2) and the Union 'seeks to advance its principles in the wider world' (Article 21).

Unlike some EU norms, such as human rights and democracy, which have always been prioritised in EU-China relations, developing a RoL promotion strategy is still at its early stage in the EU's external relations and the RoL is in this context still primarily seen as an annex to democracy and human

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rights promotion (Nicolaidis and Kleinfeld 2012:10). The EU's China policy does note the RoL and respect for human rights as a basic requirement in supporting China's transition towards an open society and a decision regarding EU-China Legal Affairs Dialogue, that could serve as a new avenue to discuss the RoL/environment nexus, had been made in 17th EU-China Summit in 2015 (The Delegation of the EU to China 2015), and in contemporary China, strengthening the RoL had been emphasised as the top priority of the Chinese Communist Party's 4th Plenum, which was the first time for a Party session to centre on RoL (Keck 2014). Moreover, the RoL is promoted in EU-China relations because of its multi-functional nature: protection of human rights and intellectual property rights, market access, and the building of international RoL in trade, finance and investment (Burnay and Wouters 2015:1). However, the RoL is promoted in only a handful of projects such as the EU-China Legal and Judicial Cooperation Programme and the EU-China School of Law. Since such promotion cannot satisfy the requirement of the EU, it is meaningful to think about further potentials of assisting China in guaranteeing the RoL.

In general, the EU's RoL promotion in EU-China relations aims to help China develop a society based on the RoL. In so doing, developing and ensuring a sound and legal framework, both in the civil and criminal sphere, providing rights to Chinese citizens, making them aware of those rights, law, and training lawyers and judges are regarded as a first step (Reiterer 2014:1293). In the EU-China Environmental Governance Programme (EGP), the RoL, described as 'accessing to environmental justice', has been identified as a key objective of this bilateral cooperation programme, has addressed the activities of the EU's RoL promotion. As aforementioned, the RoL is emphasised in the EU's China policy, and it has been embodied and promoted from case to case. Thus, the EGP is an example to study the RoL promotion.

Such is its leadership role in environmental governance, the EU, at a macro-level, aims to exert its influence on international negotiation and the agenda-setting of environmental issues (Vogler and Stephan 2007:389). Meanwhile, at a micro-level, the EU endeavours to make the EU's and international agreements and treaties work, either by protecting, preserving and improving the environment inside the EU or by cooperating with third countries beyond its borders, which eventually benefits human beings of present and future generations (Brown 2013:118). Both help the EU diffuse environmental governance related norms including the RoL.

Given the increasing economic capacity but continually deteriorating environmental condition of China, the EU launched a series of cooperation programmes aiming to increase China's capacity in environmental governance, meeting the external and internal demands placed on China (Barnes and Song 2014:2; 9). By cooperating with emerging powers and launching specific implementation programmes, the EU improves the capacity of partner countries in environmental protection on the one hand and on the other hand promotes the norms of the EU, including human rights, the RoL and good governance, at the meantime.

Arguably, the EU's contribution to the RoL promotion is limited because the RoL is also emphasised by other international organisations (Pech 2013:110; 128) and some cases show that the EU's RoL promotion remains only at the level of political dialogue (Fonck 2013:31), the paper will discuss how the EU's RoL has been promoted to China through bilateral environmental programmes. In this sense, by employing the method of content analysis, the documents of the EGP including survey results, official announcements, progress reports, news releases and training materials have been

gathered and analysed in order to find out how RoL has been reflected in this programme and promoted in practice.

Great significance has been attached to this case for three reasons. First, it helps us avoid political sensitivity and yield definitive findings. Some EU norms, such as democracy and human rights, can generate resentment because they are politically sensitive in Chinese official discourse (Small 2011:45), and merely remain at a level of political dialogue. On the contrary, the RoL embodied in environmental governance can be diffused without raising any significant political concern, considering the failure to establish a legal affairs dialogue in the context of the EU-China 2020 Strategic Agenda for Cooperation that does not include any reference to the RoL (Grieger 2015:1). Second, three partnership projects under the theme of access to environmental justice have either already been completed or are approaching to the end of the implementation, meaning that it has definitive results to be studied. Third, it offers a more practical way for the EU's norm diffusion: implementing mutual interest-based cooperation programmes since interest-led policy overlap instead of value-based conditioning will help the EU secure a long-term and sustainable working relationship with China and benefit the EU eventually (Irwin Crookes 2014:657).

Therefore, the remainder of this paper consists of four sections. The first section provides a theoretical framework covering the understanding of the RoL in environmental governance in concert with the EU's practice and norm diffusion mechanisms with a focus on the RoL. The second puts the RoL promotion in the context of EU-China cooperation on environmental governance and figure out the connection between bilateral cooperation programme and RoL diffusion. Combining the process and output of three projects under the theme of accessing to environmental justice in the EGP, the third and fourth parts will then analyse the top-down and bottom-up approaches to the RoL promotion in China; followed by a conclusion.

1. The rule of law in environmental governance and norm diffusion

The RoL, as one of the EU's founding norms, has been mentioned as one of the guiding principles of the EU's external action and one of them that the EU wants to promote to wider world in its relations with third parties (Pech 2012:9-22). Along with the other four core norms of peace, liberty, democracy and human rights, and four minor norms of social solidarity, anti-discrimination ('inclusive equality' in a later version), sustainable development and good governance, these constitute the normative ethics of the Europe (Manners 2002:242; 2008:68-75). Thus, as a normative power, the EU, possesses two aspects of normative power: being normative and acting in a normative way (Whitman 2011:6). Thus, being normative power is a drive for the EU to promote its norms.

The RoL also plays an important role in environmental governance. The United Nations Environment Programme (UNEP) (2014:2) defines environmental governance as the rules, practices, policies and institutions that shape how humans interact with the environment; and, in more detail, as the influence of regulatory processes, mechanisms and organizations on the process of environmental protection (Najam et al. 2006:3); or on environmental actions and outcomes (Lemos and Agrawal 2006:298). Therefore, realising environmental governance and achieving sustainable development goals will hinge on the RoL with a particular focus on international and national environmental law

on the post-2015 Sustainable Development Agenda (Akhtar 2015:1), which explains why the RoL promotion can be studied in bilateral environmental governance programmes.

Although both the EU and China place priority on the RoL, their understanding of the RoL is different. The EU's official statements merely state that every action taken by the EU is founded on treaties (EU 2014), without providing any specific definition about the RoL in the EU's understanding (Pech 2009:69). Scholarly research also attests that the RoL implies transparency, fairness, legal certainty, independent courts, judicial review, equality and prohibiting arbitrage of administration, from the perspective of the EU (Hartmann 2015). For China, the 4th Plenum of the CCP emphasised that the core role of the Constitution in strengthening the RoL and Chinese top leaders also stressed the importance of laws and regulations in the anti-corruption campaign (Chen 2015). However, the legal system in China remains a type of rule by law instead of a form of RoL (Peerenboom 2002:8), meaning that Chinese 'rule by law' links to maintain the social order and pursue public good, and is more likely, with the use of law, to restrict the liberty of people rather than to protect the liberty of people (Van der Mensbrugghe 2015).

In environmental governance, the RoL emphasises environmental rights and equitable distribution among all members of society and also stresses the effectiveness, enforcement and compliance of environmental legislation, which is the main challenge faced by Chinese environmental governance (Yang and Hu 2008:118). In this regard, first and foremost, the rules of law in environmental area have to reflect the principle of the RoL (Fisher 2012:1-4), and at the same time the RoL also calls for public access to environmental justices based on the raising of public awareness of environmental rights and public participation. Thus, strengthening the RoL in environmental governance could be seemed as a modernisation in environmental politics: setting standards of environmental quality and establishing a legal framework for various implementation programmes, and avoiding administration decisions taken at the top rather than the laws and regulations per se (Mol and Carter 2007:9).

In practice, the EU's experience confirms a powerful link between the RoL and environmental governance (Scott and Holder 2006:240), in that environmental law provides a framework for the evaluation and evolution of the procedures and principles underpinning environmental assessment, the scrutiny of existing practice and their continuous improvement (Scott and Holder 2006:233). The EU, through legislating the norms and discourses associated with environmental protection and creating institutional capacity to address environment, has successfully increased its effectiveness in environmental governance (Brown 2013:123). On the contrary, RoL enforcement in China has been impeded by ambiguity of environmental laws and comes after the CCP policies, the view of local governments and a court's individual sense of justice and fairness, albeit it has no short of environmental regulations (Ma and Ortolano 2000:91). On the one hand, prosecutors in environmental tort cases do not have strong individual operational independence but instead are administrated by cadre evaluation systems in the Chinese bureaucracy. On the other hand, Chinese local governments that affect procuratorates and prosecutors pursue short-term economic achievement at the expense of long-term environmental interests, so have close ties with local enterprises responsible for pollution rather than enforce national law properly (Shi and van Rooij 2014:10). Thus, promoting the RoL in environmental governance meets the requirements of both sides: norm-driven EU foreign policy and China's demand for good governance in environmental areas.

Nevertheless, solving environmental issues in the framework of environmental law directly connects with health and human rights; whilst improving governmental capacity in environmental law enforcement leads to good governance. In this sense, EU external programmes and initiatives promote more than one norm at a time. The concern of this paper is how the RoL has been promoted through bilateral programmes.

How, then, the RoL travels across physical and psychological borders? Diffusion mechanisms are summarised as contagion and transference (Manners 2002:244-5) and further generalised as coercion, competition, social learning and emulation (Gilardi 2012:461). In fact, both classifications almost overlap, in that Manners (2002) defines norm diffusion from the angle of the EU's intentionality (transference) or non-intentionality (contagion) while Gilardi (2012) conceptualises it from the standpoint of promoter (coercion), receiver (competition and learning) and the appropriateness of the norm itself (emulation). When it comes to the RoL promotion in environmental governance, the appropriateness of the RoL has obtained worldwide acceptance (Kurukulasuriya 2003:13). However, when applying the RoL promotion mechanisms in environmental governance, special cases must be considered: introducing an airline emission tax as part of stricter laws over the member states on carbon emission is an example of transference or coercion; while looking for effective solutions from EU experience on environmental governance is an example of competition and learning, as it meets the interest of its recipients.

Moreover, RoL diffusion in EU-China relations on environmental governance as a case of transnational norm diffusion is complicated for two reasons: the first is that cross-cultural travelling of norm (RoL in this case) may meet new challenges in the context of recipients considering the problems of law enforcement as an important part of RoL created by the strong decentralisation of China's policy making as well as the CCP cadres promotion systems (Shi and van Rooij 2014:10); and the second is that the recipients of norms are not only passive receivers but also proactive agents: who could influence the content and outcome of the socialisation process (Mattlin 2012:181).

Actually, researching the RoL promotion from the perspectives of influence concerns on the effect of norm diffusion on the recipients (China in this case), focusing on whether the norm diffusion brings implication to China and policy/behavioural changes in China. From the implementation procedure of the EGP, coercion is not applicable when analysing the RoL promotion in this process, because equality is located centrally in the EGP based on overlapping interests. Plus, emulation comes from the recognition of the RoL as a normative and socially constructed property instead of its role in realising the objectives of environmental governance (Gilardi 2012:22). The appropriateness of the RoL is not in doubt (Peerenboom 2002:6), but Chinese thinking of drawing upon the RoL in environmental governance largely based on the EU's experience with expected objectives.

Thus, learning appeared to be an appropriate mechanism of norm diffusion when explaining the RoL diffusion in the EGP, but further discussion is imperative. Learning can lead to policy and/or behaviour changes, but norm diffusion concerns only the latter. Policy convergence and norm diffusion are two concepts: studies of the former have led to surprise in terms of the similarity of policy making among policy promoters and recipients despite different political institutions; while studies of the latter always identify heterogeneous results in policy results of recipients despite the strong homogenising pressure from the norm promoter (Braun 2014:12). Although in theory, environmental law enforcement can be realised by making similar environmental law or emulating

its law enforcement system without engaging the Chinese public, Chinese reality requires raised public awareness of environmental rights and increased public participation in environmental litigation, given that low public participation reduces the efficiency of Chinese environmental governance (Wang 2007:173).

Thus, RoL promotion in environmental governance programme has two approaches: top-down and bottom-up RoL promotion, which constitute the analytical framework for this paper in EU-China cooperation on environmental governance. And as already noted, the implementation of the EGP in China is a typical case; studying it will provide a unique perspective with which to understand the RoL diffusion from the EU to China through bilateral cooperation on environmental governance. However, what is the EGP and what is the relationship between it and the RoL?

2. The EU-China Environmental Governance Programme and the rule of law promotion

It has been noted that the norm-driven foreign policy of the EU can generate resentment in China (Small 2011:45), so an approach of interest-based engagement offers a way out (Irwin Crookes 2014:657). Based on mutual interests, the EU's can still be diffused in the context of trade, aid and technical assistance with third parties (Manner 2002:245). Besides, although the EU is considered an actor on the world stage with its founding norms, its work in promoting its norms is less driven by ideas but by a special way of achieving them in practice (Antoniades et al. 2010:14). Given that the importance of China to the EU has been recognised in relation to a series of long term global and regional issues (European Commission 1995:5), overlapping interests between the two provides a base for bilateral cooperation and EU norm diffusion.

2.1. EU-China Environmental Governance Programme

In the realm of environmental governance, China faces severe environmental problems and no obvious progress has been made on air pollution and protection of public environmental rights. The EU, however, is still viewed as a green leader albeit of its 'failed' leadership at the Copenhagen Conference (Kilian and Elgström 2010:256). Given that China needs to learn from the EU while the EU also wants to cooperate with China in dealing with environmental problems because of the cross-border nature of many environmental issues, the existence of mutual interests becomes clear.

Under this circumstance, the EU cooperates extensively with China in environmental domain, such as having environmental policy dialogue, holding annual summits, and organising bilateral cooperation programmes and initiatives (Directorates-General Environment (DG ENV) 2015). Policy dialogues aim to reach a consensus on environmental protection; bilateral programmes and initiatives shoulder the responsibilities of capacity building and norm diffusion on the ground. Three programmes -- the EGP, the EU-China Environmental Sustainability Programme (ESP) and the China-Europe Water Platform (CEWP) -- have been carried out in this regard.

The EGP, implemented between 2011 and 2015, focuses on strengthening environmental governance in China with enhanced administration, public access to environmental information, public participation, access to justice and corporate responsibility; the ESP, launched in 2012,

concentrates on environmental sustainability by improving water quality and preventing heavy metal pollution. The CEWP focuses on the integration of different approaches to water management. Whereas the CEWP is a political initiative or platform for policy dialogue, the EGP and ESP are workable programmes; but of these, the EGP emphasises access to justice in particular, rendering it a better case to study for the purpose of this paper (DG ENV 2015).

In effect, the EGP consists of four themes: public access to environmental information; public participation in environmental consultation and decision making; accessing to environmental justice; and corporate environmental responsibility. Under these themes, 15 partnership projects in which European entities work together with local governmental organs, non-governmental organisations and environmental law research institutes have been implementing in different parts of China, with policy implications for further programmes in other parts of the country (EGP 2015). It is worth noting here that public participation is a requirement of democracy; cooperating with Chinese non-governmental organisations reflects the norm of good governance; while public access to environmental information is a prerequisite for the protection of public environmental rights. In this regard, the RoL and other EU norms can be promoted through the same process on one hand while on the other hand, these partnership projects closely interrelated with each other work together to concentrate on the RoL promotion.

2.2. The Rule of Law Promotion in Environmental Governance Cooperation

The mutual interests in environmental governance make bilateral cooperation possible because the Chinese public and elites recognise the EU's positive contribution to environmental governance (Zhang 2011:5) and the EU has also proclaimed its leadership role in global environmental governance (Vogler and Stephan 2007:389), but the urgent demand for environmental governance in China is what makes it possible to implement the RoL promotion. Faced with domestic environmental problems, Chinese policymakers look across national border for effective solutions and learn from successful experience, which has been termed as 'lesson-drawing' (Rose 1991:3).

Launching the EGP is based on a fact that the EU's practice proves the importance of the RoL in effective environmental governance and China faces problems of how to make the RoL within its environmental governance. China has no shortage of environmental law with enforceable provisions, but law-guided environmental governance still suffers alongside economic interests (Ryan 2014:184). In other words, besides law making, the RoL in Chinese environmental governance requires proper law enforcement, which China needs to learn from the EU.

To be more specific, the RoL is embodied in three sub-programmes (particularly under the theme of accessing to environmental justice) and is aimed to be embedded in Chinese environmental governance and more broadly, in China. These three sub-programmes, implemented in five provinces (Yunnan, Guizhou, Shaanxi, Gansu, Guangxi) in Western China, emphasise the cooperation between EU environmental research institutes and local government organs (Guizhou International Cooperation Centre for Environmental Protection), non-governmental organisation (All-China Environment Federation, Guiyang Public Environmental Education Centre) and environmental law research institute (China University of Political Science and Law's Centre for Legal Assistance to

Pollution Victims; Northwest University of Political Science and Law's Institute of Environmental Law) (EGP 2015).

In fact, bilateral cooperation in these programme relating to environmental justice explains when and where the RoL has been promoted. During cooperation at practical level, the basic principle of the RoL, reflected in establishing environmental courts and tribunals, promoting the knowledge of environmental litigations and raising public awareness of environmental rights has been broadcasted by these European partners. Then, in combination with local environmental status and environmental justice practice, these principles and rules are localised and put into action. Considering the global and regional effect of environmental issues, decision making and law enforcement based on geographical proximity are more likely to match the desires of citizens influenced by relevant problems and therefore enjoy greater legitimacy in terms of environmental jurisdictional allocation, because the directly harmful influence of environmental problems is local in scope (Dua and Esty 1997:121). Besides which, the greater the role played by actors in norm diffusion in target countries, the greater the prospects of long lasting effect (Domínguez 2010:7). Implementing these project in environmentally vulnerable areas in Western China and building the capacity of influential actors in Chinese environmental governance fits with the requirements of the RoL promotion.

In practice, the diffusion process of the RoL from the EU to China can be looked at from a top-down approach of building the capacity of law enforcement; and bottom-up approach of raising public awareness of environmental rights and increasing public participation. The latter is a reflection of Chinese reality that requires raised public awareness of environmental rights and increased public participation in environmental litigation, which also helps determine whether the RoL can eventually root itself in China's environmental governance. By looking at these two approaches, how the RoL has been promoted in the cooperation on environmental governance can be better understood.

3. Top-down approach to the rule of law promotion: capacity building on law enforcement

Effective implementation of environmental law in China requires independent judicial management systems (Wang 2007:176-7); and also takes the specificity of practical and technical problems in law enforcement into account (Home 2007:10). As well as reforming the judicial management system, establishing environmental courts and tribunals (ECTs) and training judges are all required. In this sense, capacity building for environmental justice and protecting public environmental rights are vital components of all these three sub-programmes.

The first EGP project under the theme of accessing to environmental justice, '*Capacity Building of Environmental Justice and Guarding Environmental Rights in Western China*' (EGP-Yunnan) is jointly implemented by an Italian law school and the China University of Political Science and Law in Yunnan and Guizhou provinces. It supports the establishment of environmental tribunals in Yunnan and trains judges from Western China. The second project, '*EU Judges Training in Environmental law*' (EU-China judges), is jointly implemented by a German environmental enterprise and the Northwest University of Politics and Law. The only objective of this sub-programme is to train local judges from Shaanxi, Guangxi and Gansu province, improve their capacity in handling environmental law cases, and provide a model for environmental courts by studying EU experience (EU-China Judges 2015).

The third project, *'Improving Access to Environmental Justice to Protect People's Rights in Guizhou province'* (EGP-Guizhou 2015a), mainly concerns public awareness of environmental rights (as well be elaborated upon later); but also partially covers environmental law enforcement by promoting the experience of Guizhou environmental tribunals.

According to EU researchers, the EU establishes the ECTs in respond to demands for specialisation, which owe to the complicated nature of environmental law and the technical factors which support effective implementation (Ryall 2013:1). Although neither international nor EU law requires the establishment of ECTs, EU member states have a wide variety of them in operation. Based on the specific cases of ECTs operating in Sweden, Finland, the UK (England and Wales) and Ireland, EU experts in the partnership projects suggest that environmental law enforcement needs: a clear and coherent legislative framework; judges who are expert in environmental law and have appropriate technical knowledge in environmental areas; well-trained university students in environmental law; and an updated pool of successful experience of environmental courts (Ryall 2013:2). In consequence, three EGP projects work on improving the capacity of environmental law enforcement in local areas.

Therefore, the main achievement of the Yunnan project lies in helping establish environmental tribunals. Through training judges in environmental law and providing funding to purchase equipment, the EGP-Yunnan supported two environmental tribunals in Anning and Fuyuan, which started the operation and opened to the public in May 2013. Correspondingly, local judges were trained by the EGP-Yunnan and technical support was also provided (Wang 2013:6), which addressed one aspect for specialisation in environmental law enforcement: environmental courts.

Training judges is another objective of the project of Yunnan project and the only one of the EU-China Judges project. In order to train local judges in environmental law as effectively as possible, the concept of 'training the trainer' is applied by the latter: which successively opened the first round of the training sessions in Xi'an (Shaanxi province), Lanzhou (Gansu province) and Nanjing (Guangxi province) in 2014. Senior judges from these three provinces were trained by professionals from the EU and China, through theory-oriented lectures, small group discussion, and court case analysis. The second round was scheduled in 2015 and judges had been trained by those already trained in the first round, which would definitively extend the coverage of the training project. Training judges to know environmental law and technical issues in environmental areas reflects another aspect of specialisation in environmental law enforcement.

According to the EU, promoting the experience of environmental tribunals as a way of increasing the capacity of environmental law enforcement cannot be ignored. The practice of environmental tribunals has a short, but at time successful history in China. The first such tribunal in China, founded in the Qingyang city, Guizhou province, aimed to protect the main drinking water sources (two lakes and one reservoir) of Guiyang City. Its experience and typical cases were discussed in training sessions about mechanisms of environmental courts (EGP 2015). The first environmental tribunal in Liuzhou, Guangxi province, was established in 2014 and made significant progress in environmental litigation, which was also used as a training location for the EU-China Judge project (2015). Promoting successful experience is also one of the concerns regarding the specialisation in environmental law enforcement.

Any discussion referring to courts in environmental governance must address practical and philosophical considerations, and one of the oft-cited reasons for opposing the involvement of courts in solving environmental issues is the lack of environmental specialisation of judges (Benidickson and Mcleod-Kilmurray 2009:210). Thus, beyond classroom teaching, carrying out moot court competitions is also used to train environmental law students in universities. Since 2012, National Moot Environmental Courts has been held annually in Ocean University of China in Shandong province, Wuhan University of Hubei province and Shanghai University of Finance and Economics (EGP-Guizhou 2015b). Interestingly, the judges who worked in the first environmental tribunal in Guizhou province were invited by the first Moot Environmental Court and played roles, which manifested the importance attached to the moot court.

Furthermore, when introducing the successful experience of environmental tribunal in Qingyang city, the EGP-Guizhou emphasised the role of an advisory board (consisting of environmental and technical experts), supervision of environmental cases from non-governmental organisations as independent third party and the civil juries in the environmental litigation. As Hachez and Wouters (2013:27) suggest, by viewing the RoL as a dialectical ideal, promotion of it should focus on generating a consensus within the social order on the proper design of a legal system capable of making valid law, which also places an emphasis on the recipient's side. In short, public recognition of environmental law and the environmental courts system does matter in environmental law enforcement, which cannot be realised without official support.

Through supporting the establishment of environmental tribunals, helping train judge from Western China, encouraging the promotion of the successful experience of Chinese environmental tribunals and environmental law education in universities, the top-down approach to the RoL promotion in China is reflected in the capacity building of environmental law enforcement.

4. Bottom-up approach to the rule of law promotion: public awareness and public participation

As aforementioned, the RoL promotion in Chinese context also emphasises public participation because of low public awareness of self-identification as the victims of environmental problems (just over 6%) (Munro 2014:316), low public confidence in the courts and the lack of a reliable formal channel for addressing environmental disputes (Wang 2011). Compared with environmental law system in Sweden, the law making in environmental area in China is still very young and imperfect and some environmental tort even cannot refer to specific regulations. Besides, in the absence of the similar effective insurance system to Sweden, obtaining compensation for environmental damages through the courts is the only route open to Chinese citizens (EGP-Guizhou 2015b:7). Thus, public awareness of environmental rights and public participation matters greatly in Chinese environmental governance, particularly when official supervision is not enough in certain environmental areas.

Since the neglected role of citizens in environmental protection hampers the efficacy of the RoL in environmental governance in China (Wang 2007:173), the EU provides recommendations with which to raise public awareness of environmental rights and increase public participation in environmental litigation and protection. The EGP-Guizhou, jointly implemented by a Swedish environmental research institute and local government organ and non-governmental organisation in Guizhou,

works on the improvement of public awareness of environmental rights in Guizhou province and aims to promote its experience to other provinces in China.

The EU's suggestions based on the experience of the Environmental Liability Directive (ELD) of 2004. The ELD concerns liability for damage caused to public nature resources related to the public interest; and promotes the compensation for damage to natural resources through resource replacement in the EU, which, through developing methods for estimating remediation costs and other directive associated with ELD, leaves member states many options for transporting it into national laws. Thanks to its practice in United Kingdom, Czech Republic and Spain, the ELD has found that lack of data covered under the ELD makes the determination of baseline conditions difficult; further decentralisation and public partnership and participation are necessary for capacity building; and special attentions paid to the protection of vulnerable society groups living in rural areas is a necessity (Pechacek 2012:1-2; 25-6).

Based on EU practice, then, China needed first to conduct a baseline study in order to understand its status and awareness-raising activities in rural areas, which in turn can promote public participation in environmental litigation and protection. Accordingly, the EGP-Guizhou conducted a questionnaire survey from December 2012 to March 2013, covering 900 participants from Guiyang (the capital city of Guizhou province), Zunyi (the largest industrial city), Anshun (the preserved region for drinking water), Qiandongnan Miao and Dong Autonomous Prefecture (mine development and residence region of ethnic minorities) (Gao 2013:6). Investigating the status of environmental rights awareness and obstacles in protecting people's environmental rights in local areas represented the start of carrying out awareness raising activities. The results of the investigation highlighted the status of problems existing about the awareness of and protection of the public environmental rights, which served as a baseline for future activities.

Conducting public-involved awareness-raising activities was immediately followed. More than 10 awareness raising events were held between May 2013 and January 2015 -- three in August and November 2013 respectively for environmental basic knowledge training and environmental negotiation technique training; two were held in May and November 2013 about environmental law enforcement; three seminars about environmental damage assessment were held in April, September and December 2014 in Guiyang; while two European high-level policy twinning tours took place in September 2013 and January 2015, which fostered dialogues between EU environmental law experts and Chinese participants. Plus, it covered the representatives from different areas concerning the environmental protection because the scale of these seminars ranged from around 20 attendees to over 100 (EGP-Guizhou 2015a). Importantly, as local villagers were invited to attend most of these events, environmental knowledge was delivered to local villagers and effective dialogue on environmental justice issues generated between local governmental officials and villagers: resulting in public participation in environmental governance and opinions being collected from vulnerable groups living in rural areas. Indeed, improving public awareness of environmental rights and public participation in environmental litigation can be seen as an alternative approach to improve China's environmental governance (Liu et al. 2012:109).

Leveraging the influence of mass and social media in raising awareness of environmental rights protection has been another component of the EGP-Guizhou (2015a). During the implementation of the EGP-Guizhou, a 37-minutes long TV-programme, entitled 'Protecting the environment with the

RoL' was shot and broadcast in Guizhou province with the support of governmental organs, and disseminated through Chinese social media. Also, the coverage of the EGP in Chinese media has impacted upon public awareness of environmental rights. All these events under the EGP, ranging from judge training in three western Chinese provinces, investigations on the status of public knowledge of environmental rights and seminars between project implementers and Chinese citizens about the protection of environmental rights, are covered by regional and national media. After all, media coverage of environmental issues and protection of environmental rights helps contribute to increasing public awareness (Guo and Marinova 2011:1675).

As a result, the EGP-Guizhou, as the first sub-programme of the EGP completed in China, has provided valuable experience and insights to China's environmental governance. In its final report release conference in March 2015, Jingyun Li, a high-level official in the Ministry of Environmental Protection of China, stated that a great deal of the EGP-Guizhou's policy advice had been adopted in the new version of Environmental Protection Law; and that public participation in environmental law enforcement and environmental protection should be continued and promoted (People.com 2015). Although it is too early to jump to the conclusion that the RoL has been embedded in Chinese environmental governance, this at least demonstrates the importance placed on the RoL by the country's central government because of its role in effective environmental governance.

As we can see, then, besides enhancing the capacity of environmental law enforcement by establishing environmental tribunals and training judges as a top-down approach to the RoL promotion, raising Chinese public awareness of environmental rights, increasing their capacity to access to environmental information and encouraging them to actively pursue lawsuits when their rights are violated, are all reflected in the bottom-up approach to the RoL promotion: all of which can enhance the efficacy of environmental law enforcement and help the RoL be promoted to China.

Conclusion

As one of the highly valued international norms and one of the founding principles of the EU, the RoL plays a significant role in effective environmental governance, which has been proved by the EU's experience. With China facing serious environmental problems and seeking solutions across its border, the EU's success in this area offers salutary lessons. In China, environmental law making partially reflects the principle of the RoL, but building the capacity of law enforcement, raised public awareness of environmental rights and public participation in environmental litigation are also of importance.

By launching specific partnership projects related to the RoL under the EGP, EU environmental research institutes helped provide guidance and policy recommendations; while on the Chinese side, environmental tribunals were established, local judges were trained for environmental law enforcement, and the Chinese public, particularly vulnerable groups living in rural areas, were educated as to their environmental rights, with a view to increased level of participation in environmental litigation and protection. Furthermore, the experience of these projects in five provinces of Western China has been summarised and brought together at central government level:

with clear policy implications for further action, and in the expectation of their duplication in other parts of the country.

In sum, as this paper has demonstrated, the RoL has been promoted through partnership projects by top-down approach of law enforcement and bottom-up approach of raising awareness of environmental rights and public participation, which explain how the EU's RoL has been promoted in bilateral programmes. When considering the difference between the EU and China in the application of the RoL in environmental governance, special emphasis was placed on how awareness of environmental rights and public participation was raised amongst the public during implementation of the EGP; but this paper cannot provide a concrete answer as whether the RoL has rooted in Chinese environmental governance for the longer term. To do so would require the collection of empirical data from the judges, ordinary people (environmental victims and residents in environmental-vulnerable areas) and non-governmental organisations covered by these projects, which merits further research beyond the scope of this study.

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